

KING & SPALDING

King & Spalding LLP
1185 Avenue of the Americas
New York, NY 10036-4003

Tel: (212) 556-2100
Fax: (212) 556-2222
www.kslaw.com

Arthur J. Steinberg
Direct Dial: 212-556-2158
asteinberg@kslaw.com

August 10, 2011

**VIA ECF FILING AND
OVERNIGHT MAIL**

The Honorable Robert E. Gerber
United States Bankruptcy Judge
United States Bankruptcy Court
Southern District of New York
Alexander Hamilton Custom House
One Bowling Green
New York, New York 10004

**Re: In re Motors Liquidation Company, et al.
Case No. 09-50026**

Dear Judge Gerber:

King & Spalding LLP is counsel to General Motors LLC (“New GM”) in the above-referenced bankruptcy cases. The Court has scheduled a hearing for September 26, 2011 to hear argument on the relief requested in various pleading filed by Mr. Billy Ray Kidwell.

As referenced in the pleadings, Mr. Kidwell had commenced litigation against New GM in the United States District Court for the Middle District of Florida (“**Florida District Court**”). In connection with that litigation, most of Mr. Kidwell’s claims against New GM were previously dismissed with prejudice; the Florida District Court dismissed Mr. Kidwell’s remaining breach of warranty claims against New GM without prejudice to Mr. Kidwell filing a second amended complaint. By Order dated February 11, 2011, Mr. Kidwell was given 30 days to file the second amended complaint. Mr. Kidwell did not file a second amended complaint during that time period.

By Order to Show Cause dated July 19, 2011 (“**OSC**”), the Florida District Court directed Mr. Kidwell to show cause why his case should not be dismissed for failure to prosecute due to his failure to file a second amended complaint. Mr. Kidwell was given 14 days to respond to the OSC and to file a second amended complaint. Mr. Kidwell did not respond to the OSC or file his second amended complaint within the time provided by the Florida District Court.

Honorable Robert E. Gerber
August 10, 2011
Page 2

Accordingly, on August 9, 2011, the Florida District Court entered an Order (“**August 9 Order**”) (i) dismissing Mr. Kidwell’s complaint without prejudice, and (ii) directing the Clerk of the Court to “terminate all motions and deadlines, enter judgment accordingly and close this case.” A copy of the August 9 Order is enclosed herewith.

Respectfully submitted,


Arthur Steinberg 

cc: Mr. Billy Ray Kidwell
5064 Silver Bell Drive
Port Charlotte, Florida 33948

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

BILLY R. KIDWELL,

Plaintiff,

-vs-

Case No. 2:09-cv-108-FtM-36DNF

G. RICHARD WAGONER, GM CEO sued in a personal capacity, PERCY N. BARMEVIK, GM Board of Directors sued in personal capacity, ERSKINE B. BOWLES, GM board of Directors sued in a personal capacity, JOHN H. BRYAN, GM board of directors sued in a personal capacity, ARMANDO M. CODINA GM board of Directors sued in a personal capacity, GEORGE M.C. FISHER, GM Board of Directors sued in a personal capacity, KAREN KATEN, GM Board of Directors sued in a personal capacity, KENT KRESA, GM Board of Directors sued in a personal capacity, ELLEN J. KULLMAN, GM Board of Directors sued in a personal capacity, PHILLIP A. LASKAWY, GM Board of Directors sued in a personal capacity, E. STANLEY O'NEAL, GM Board of Directors sued in a personal capacity, ECKHARD PFEIFFER, GM board of Directors sued in a personal capacity, CAROLYN WESTBERG, GM customer relationship manager sued in a personal capacity, and GENERAL MOTORS COMPANY,

Defendants.

ORDER

This case is before the Court upon periodic review. On February 11, 2011, Magistrate Judge Douglas Frazier entered an Order (Doc. 234) granting Plaintiff leave to file a Second Amended Complaint within thirty (30) days from the date of the order. Plaintiff filed a Notice of Interlocutory Appeal on March 2, 2011 (Doc. 235), which was dismissed by the Eleventh Circuit

Court of Appeals on May 4, 2011 (Doc. 239). Thereafter, on July 19, 2011, Magistrate Judge Frazier directed Plaintiff to show cause in writing why this case should not be dismissed for failure to prosecute due to the Plaintiff's failure to file a Second Amended Complaint and failure to comply with a court order (Doc. 240). In that Order, Plaintiff was directed to file his Second Amended Complaint within fourteen (14) days of the date of the order (Doc. 240 at p.2).

As of the date on this Order, Plaintiff has failed to comply with the Court's Orders of February 11, 2011 and July 19, 2011. Plaintiff has not filed a Second Amended Complaint, nor has he requested another extension of time to file a Second Amended Complaint. The February 11th and July 19th Orders were mailed to Plaintiff's address of record and have not been returned to the Court. For failing to comply with the Court's Orders by filing a Second Amended Complaint and prosecuting this case, Plaintiff's action is subject to dismissal. *See* Fed. R. Civ. P. 41(b) and Rule 3.10, Local Rules of the Middle District of Florida. Accordingly,

It is hereby **ORDERED**:

1. The Complaint is **DISMISSED**, without prejudice.
2. The Clerk of Court is directed to terminate all motions and deadlines, enter judgment accordingly and close this case.

DONE AND ORDERED at Fort Myers, Florida, this 9th day of August, 2011.

Charlene Edwards Honeywell
Charlene Edwards Honeywell
United States District Judge

Copies: All Parties of Record